



COMMONWEALTH of VIRGINIA

Office of the Governor

Robert F. McDonnell
Governor

March 19, 2012

The Honorable Richard L. Saslaw
General Assembly Building, Room 613
Capitol Square
Richmond, Virginia 23219

The Honorable A. Donald McEachin
General Assembly Building, Room 428
Capitol Square
Richmond, Virginia 23219

The Honorable Lacey E. Putney
P O Box 127
Bedford, VA 24523

The Honorable Charles J. Colgan, Sr.
10677 Aviation Lane
Manassas, VA 20110

The Honorable Walter A. Stosch
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Glen Allen, VA 23060

The Honorable William J. Howell
106 Carter Street
Fredericksburg, VA 22405

The Honorable Thomas K. Norment, Jr.
P O Box 6205
Williamsburg, VA 23188

The Honorable M. Kirkland Cox
P O Box 1205
Colonial Heights, VA 23834

Dear Colleagues:

I understand that budget negotiations will resume in Richmond this Wednesday. That is a welcome development. There has already been much discussion about the necessity of promptly adopting a caboose budget and new biennial budget from both a policy and political perspective. I am, however, very concerned that members of the Senate Democratic caucus have asserted in a March 7, 2012 letter to me that adopting a timely budget in the immediate future is not imperative, using previous missed deadlines and late budgets as a rationale. As the chief executive of the Commonwealth charged by the *Constitution of Virginia* with the administration of government, let me be clear: that is absolutely not the case. Such delays are not only unacceptable to the citizens of Virginia, but they also jeopardize many essential functions of state and local governments that require action well in advance of July 1.

The current situation is the first time since the beginning of the biennial budget process in 1921, where no budget has passed the legislature during the regular session, and no conference committee has convened. This is not the kind of history that the mother of presidents and cradle of democracy should be making. We cannot start down a road of becoming like Washington where a budget has not passed for 1,000 days, and multiple funding crises are the norm.

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Failure to act on a budget in a timely manner will have many negative impacts on state and local governments and agencies, as well as our citizens, as follows:

- There are potential credit implications for our state. The Commonwealth is scheduled to do several debt issuances this spring. For example, the Virginia College Building Authority refunding bonds are due to close on March 29. In April, the Virginia College Building Authority, the Virginia Public School Authority, and the Commonwealth Transportation Board (for US Route 28 refunding) are scheduled to go to market. Each of these issues will require disclosure statements as to the Commonwealth's financial status and known future events that are considered "material". This means that the fact that the Commonwealth is in overtime with its budget deliberations will be disclosed and considered by the markets, adding uncertainty to our financial dealings. Ultimately, if we fail to produce a budget, that could trigger a review of the Commonwealth's AAA bond rating, much the same as it did with the federal government last August during the national debt ceiling debate.
- Local Governments will be unable to enact budgets, including those for public school divisions. Local government departments have until April 1, 2012, to submit their budgets which are dependent on timely enactment of a state budget. Most local governments must also enact school division budgets by May 1 or May 15, 2012, all of which are dependent on the state fulfilling its Constitutional obligations. Without the certainty of state aid, some of the localities in the state could have a very difficult time providing essential public services like K-12 education.
- The Compensation Board will be unable to fully fund law enforcement per diem payments. Fourth quarter payment in FY12 is due in April of this year and the absence of an approved budget will require the Compensation Board to reduce payment amounts to already cash strapped local governments and regional jails by one-third.
- There will be numerous missed statutory deadlines for Compensation Board. The Code requires the Board to set budgets and notify officers and local governing bodies of amounts fixed for the next fiscal year on or before May 1 of each year. Again, without predictable state support, some of these offices will be forced to close after July 1.
- Lack of a timely budget will potentially necessitate shutdown of important transportation projects across the Commonwealth. Without a budget, and based on current contract provisions, VDOT must notify its contractors of the need to shutdown routine operations

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as of April 15, 2012. By May 1, they must issue stop work orders to contractors and identify projected shutdown and demobilization costs, all at additional expense to taxpayers. Further, the uncertainty will impede the award of new construction contracts, wasting time in the summer months which are valuable for road construction.

- State employees will have to be furloughed starting on June 10, 2012. That is the date on which salaried state employees begin earning salaries to be paid on the July 2, 2012, pay date. State agencies would be required to furlough employees on June 10, 2012, to avoid incurring this yet-to-be-funded obligation.
- Retailers will continue to be burdened with payment of the Accelerated Sales Tax. In June of 2012, 1,407 retailers and essential employers will have to comply with the provisions of the accelerated sales tax program. My introduced version of HB 29 proposed \$50 million to remove that onerous requirement for 95.6% of the affected retailers. The Senate has failed to even pass the non-controversial caboose bill to make routine amendments to FY12 spending.
- Contracts for goods and services as well as leases will have to be curtailed. All agency contractual obligations and purchases would have to be curtailed not to extend beyond June 30. Moreover, leases and contracts in which the Commonwealth or its agencies are the named lessees will have to be analyzed for potential anticipatory breach or default due to lack of a budget to meet future obligations. Procurement will be affected long before July 1 since the procurement of most goods and services have to be advertised and publicly bid before goods and services can be obtained. The larger the size of the procurement, the sooner one could expect an impact.
- Tax refunds could get delayed. The individual income tax is the largest source of general fund revenue making up about 2/3's of the general fund. The Commonwealth has a May 1 filing deadline for individual income tax returns. If there is no budget, there is no mechanism for the state to refund tax overpayments or amounts otherwise due to taxpayers after July 1 (refunds are covered by a sum-sufficient appropriation in the Appropriation Act). This prospect would significantly impact the filing of complex returns, both individual and corporate that often require extensions to complete the filings. With no provision for refunds, the timing and completeness of these returns could be unintentionally affected giving rise to an increase in amended returns at some point.

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- There will be upward pressure on Higher Education Tuition. Our colleges and universities usually set their tuition rates for the fall in the months of April and May. This allows them to get tuition billings out to parents and students in a timely fashion, so that students can formally enroll prior to the beginning of classes. If the state does not have a budget in place, the colleges and universities will have no knowledge of what to expect in the way of state funding when setting their tuition rates. The most likely scenario is either upward pressure on tuition rates to make up for the risk of not receiving needed state assistance, or a postponement of tuition bills resulting in uncertainty for students in what their tuition payments will ultimately be. Colleges and universities need a state budget now, so they know their state appropriation and can set tuition rates appropriately in April and May.
- General Uncertainty. In addition to everything above, the lack of a budget will promote general uncertainty on the part of the public as to what state funding is available for core public services. The introduced budget bill in part established public expectations as to what essential spending and necessary investments would be. Each day we do not have a new budget in place, future events will not match these expectations and, in the public's viewpoint these items in the introduced budget will be at risk:
 - A half billion dollars or more in new funding for K-12 will not materialize,
 - An additional \$200 million or more for higher education will be jeopardized, influencing academic programs at institutions of higher education as well as future tuition levels,
 - The retirement system for state employees and public school teachers will continue to rack up unsustainable liabilities, as the proposed historic new funding of employer retirement rates cannot be implemented,
 - Our job creation efforts will be jeopardized as prior commitments, performance grants and marketing activities come to a halt, and
 - Safety net programs and health care reform efforts would be interrupted, placing hardship on the persons who can least afford it.

I take seriously the responsibilities committed to me by the Constitution and the people of Virginia, and I know you do as well. Therefore, I reiterate my request that you act without delay

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to develop and pass a budget that addresses the core functions of government upon which our citizens rely. As always, you will have many important decisions to make to reconcile differences in conference, but, to your credit, you did that promptly last year, leading to a rare unanimous budget vote. I therefore respectfully request that you immediately and actively complete the substantive budget negotiations in this special session in the best interest of the 8 million citizens of Virginia and over 100,000 state employees who eagerly await the new two-year spending plan.

I met with you on the last day of the session to provide my general input on the budget and select major items I have asked you to address. As always, I stand ready to meet and work with you at any hour to resolve the outstanding issues for the good of our people.

Sincerely,

A handwritten signature in black ink, reading "Robert F. McDonnell". The signature is fluid and cursive, with the first name "Robert" and last name "McDonnell" clearly legible.

Robert F. McDonnell

RFM/pdw

cc: Members, Virginia General Assembly
The Honorable Martin L. Kent
The Honorable Richard D. Brown
The Honorable J. Jasen Eige